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Amendment After Final
Attorney Docket No. S63.2N-8429-US03

Remarks

This Amendment is in response to the Final Office Action dated **March 7, 2005**, wherein claims 60-61 were withdrawn; claims 51-59, 60 and 62 were rejected under 35 U.S.C. §112, second paragraph; and claims 34-36, 39-43, 47, 49, 50 and 62 were rejected under 35 U.S.C. §103(a) as being obvious over U.S. 6,348,065 to Brown et al and U.S. 5,449,373 to Pinchasik et al.

The following comments are presented in the order and with section headings corresponding to the Final Office Action and in corresponding order.

Election/Restriction

In the Final Office Action claims 60 and 61 were withdrawn from further consideration.

Applicants have previously argued that when the connecting strut of FIG. 10F (the elected "species") is combined with a stent configuration such as is shown in FIG. 8A for example, the resulting embodiment is described by claims 60 and 61. The Examiner has rejected this reasoning based on the assertion that "the species are mutually exclusive and a combination of them would merely be a combination of mutually exclusive species in a similar manner to that of elements of a Markush listing."

Applicant continues to disagree with the Examiner's grounds for restricting the instant claims, and posits that the Examiner's assertion that the species are "mutually exclusive" is in error.

In restriction practice "[S]pecies are *usually* but not always independent as disclosed since there is usually no disclosure of relationship therebetween." (emphasis original see MPEP806.04(e))

In the instant Application, figure 10A is presented on page 22 as an illustration of example connecting strut design which can be used in any of the embodiments (previously) discussed in the Application (page 22, lines 13-15). The Examiner's assertion that the embodiment of FIG. 10F is mutually exclusive to the embodiment of FIG. 8D, for example, is simply not correct. Rather than being "mutually exclusive", their combination is explicitly described in the Application.

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In light of the above, Applicant once again requests that the Examiner's withdrawal of claims 60 and 61 be reconsidered.

Claim Rejections – 35 U.S.C. §112

As indicated above Applicant has amended rejected claims 59, 60 and 62 to include the recitation that the stent is "constructed from a tube". Applicant notes that non-rejected claims such as, claims 34, 39, 42, etc., also include the recitation of a "tube" construction, as the only reference to the "round nature" of the stent referred to by the Examiner. As such, Applicant assumes that the inclusion of the "tube" aspect to the instant claims is sufficient to correct the ambiguity perceived by the Examiner.

Claim Rejections – 35 U.S.C. §103

Applicant disagrees with the grounds of rejection to claims 34-36, 39-43, 47, 49, 50 and 62, which were presented in the Final Office Action. Applicant notes that the grounds for rejection in the Final Office Action have also been put forth in earlier Office Actions. In response to the Final Office Action, Applicant incorporates herein the reasons which he has previously presented in earlier amendments which continue to address the Examiner's repeated rejection.

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Conclusion

In view of the foregoing, Applicant believes that the present application, with claims 34-36, 39-43, 47 and 49-62 is in condition for allowance. Favorable consideration and prompt action to that effect is sincerely requested.

Should the Examiner believe that anything further would be desirable in order to place the application in better condition for allowance, the Examiner is invited to contact the Applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: May 5, 2005

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